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May 1, 2002

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

By Hand

Marlene H. Dortch, Secretary
Federal Communications Commission
236 Massachusetts Avenue, N.E.
Suite 110
Washington, D.C. 20002

Re: In the Matter of *Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* CC Docket 96-128

Dear Ms. Dortch:

Please find enclosed for filing the original and four copies of the RBOC Payphone Coalition's Comments on Petitions for Reconsideration and Clarification of the Fourth Order on Reconsideration and Order on Remand. Also enclosed is one extra copy of the motion. Please date-stamp and return the extra copy.

Thank you for your assistance. If you have any questions, please call me at 202-326-7921.

Sincerely,

Aaron M. Panner

Aaron M. Panner

Enclosures

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996	)))	CC Docket No. 96-128

RBOC PAYPHONE COALITION'S COMMENTS ON PETITIONS FOR RECONSIDERATION AND CLARIFICATION OF THE FOURTH ORDER ON RECONSIDERATION AND ORDER ON REMAND

INTRODUCTION AND SUMMARY

The RBOC Payphone Coalition ("the Coalition") files these comments in response to petitions for reconsideration of the Fourth Order on Reconsideration and Order on Remand, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 17 FCC Rcd 2020 (2002) ("*Fourth Recon. Order*"), filed by the American Public Communications Council ("APCC"), Sprint, WorldCom, and ITC^DeltaCom. With the exception of ITC^DeltaCom's petition – which contends that any rule imposing interim compensation obligations on small IXCs is impermissibly retroactive – the challenges are narrow, but they draw attention to the need for the Commission to clarify quickly the way in which the industry should resolve outstanding compensation obligations. Unless the errors in the *Fourth Recon. Order* are corrected in subsequent orders, the implementation of the Commission's interim and intermediate compensation rules will give rise to nearly endless disputes. Indeed, many of the IXCs' comments appear intended to reinforce, rather than to correct, some of the Commission's mistakes. The Commission should reject any such attempt to confuse matters further, and should clarify and simplify its interim and intermediate period compensation rules.

I. ITC^DeltaCom's claim that the *Fourth Recon. Order* involves impermissibly retroactive regulation is incorrect. Where an agency has committed legal error in a legislative rulemaking capacity, it must endeavor to "put[] the parties in the position they would have been in had the error not been made." *Exxon Co., U.S.A. v. FERC*, 182 F.3d 30, 49 (D.C. Cir. 1999) (quoting *Public Utils. Comm'n of the State of Cal. v. FERC*, 988 F.2d 154, 168 (D.C. Cir. 1993)). ITC^DeltaCom, like all carriers, has been on notice since this rulemaking was initiated that regulations would be put in place establishing obligations to compensate payphone service providers ("PSPs") for calls made from their payphones and that it might be subject to those obligations. The final resolution of individual carriers' obligations will simply resolve an issue that has been pending since section 276 was enacted by Congress more than *six years ago* – that is, the exact scope of carriers' obligations for payphone-generated calls.

II. Both Sprint and WorldCom seek to muddy the waters concerning the calculation of the correct "true-up" amount for the intermediate period, attempting to compound the Commission's own errors. This issue is, in principle, straightforward. Throughout the intermediate period (October 7, 1997 to April 20, 1999), IXCs were obligated to make quarterly compensation payments, either on a per-phone or per-call basis, applying a \$.284 per-call rate. The Commission has now determined that the proper rate should have been \$.238 per-call (*i.e.* \$.24 less \$.002 for Flex ANI, a cost that was theoretically recovered in the post-intermediate period). The IXCs are flatly wrong to suggest that the rate for the intermediate period should be \$.229 – an amount that would exclude any compensation for the payment delays inherently built into the payphone compensation system – rather than $.238. Because all compensation payments, including the payments at the $.284 rate, were made "several months after the dial-around call[s were] made" the payments properly included a cost element to compensate PSPs for that delay. Third Report and Order, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 2545, 2630, ¶ 187 (1999) ("*Third Report and Order*"). Thus, the true-up should equal the difference between the payment actually made (either on a per-call or per-phone basis) and the payments that should have been made based on the corrected $.238 rate. To the extent that the Commission itself has indicated to the contrary in the *Fourth Recon. Order*, it should correct this obvious error. *See also* APCC's Petition For Reconsideration at 4 (FCC Filed Apr. 3, 2002).

III. Sprint's and WorldCom's challenges to the Commission's calculation of payphones' average monthly call volume during the interim and intermediate periods are without merit. The Commission properly relied on the data submitted by the PSPs, which were the best available evidence of call averages for the interim period. In addition, because those figures were within a narrow range, it was reasonable for the Commission to use an arithmetic average of those figures, rather than a weighted average. And there is no support in the record for WorldCom's claim that *per-phone* call volumes fell during the intermediate period; to the contrary, recent data submitted by LECs in this proceeding shows that per-phone call volumes actually increased between the first quarter of 1998 (near the beginning of the interim period) and the fourth quarter of 1998 (near the end).

IV. The IXCs' remaining challenges in this proceeding are likewise without merit. Sprint's challenge to the Commission's determination that IXCs should be responsible for the interim compensation for calls that they carried that were subsequently passed off to their reseller customers is at best premature – until the Commission has determined how it will allocate compensation obligations, the question is academic. Indeed, the Commission is likely to be constrained to allocate compensation obligations according to the best data available. But there would be nothing inappropriate in requiring underlying facilities-based IXCs to pay compensation for the interim period if that were the most reliable way of allocating compensation responsibilities among carriers who actually used PSPs' services. WorldCom's call for delaying the effective date of any eventual allocation order is unjustified and should be rejected.

DISCUSSION

I. THE COMMISSION'S ACTION IS NOT IMPERMISSIBLY RETROACTIVE OR INEQUITABLE.

Contrary to ITC^DeltaCom's arguments, the *Fourth Recon. Order* is neither impermissibly retroactive nor inequitable.

A. The *Fourth Recon. Order* Is Not Impermissibly Retroactive

Contrary to ITC^DeltaCom's contentions, the *Fourth Recon. Order* does not involve impermissibly retroactive rulemaking. In section 276 of the Act, Congress specifically required the FCC to "establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone." 47 U.S.C. § 276(b)(1)(A). Moreover, the FCC was required to adopt such a rule – and to deal with any reconsideration petitions – within nine months after adoption of the 1996 Act. *Id.* § 276(b)(1). Pursuant to that mandate, the FCC initiated the instant rulemaking before the interim period began. Moreover, the specific issue that the Commission is now resolving has been explicitly litigated for nearly as long: major IXCs' had challenged the FCC's method of allocating those interim obligations prior to the start of the interim period. Indeed, IXCs specifically argued that "LECs and smaller IXCs should not be excluded from paying interim compensation." Order on Reconsideration, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 21233, 21289, ¶ 122 (1996). Although the Commission rejected the IXCs' challenge, it was accepted by the D.C. Circuit, which held – again, before the end of the interim period – that exempting small IXCs from compensation obligations for the interim period was unlawful. *Illinois Pub. Telecomms. Ass'n v. FCC*, 117 F.3d 555, 565 (D.C. Cir. 1997). Accordingly, all carriers were indisputably on notice during the interim period that they could be subject to compensation obligations for payphone calls completed during the period.

In this situation – *i.e.*, where a regulatory agency is required by court remand to correct a past error in legislative rulemaking – "the proper remedy is one that puts the parties in the position they would have been in had the error not been made." *Public Utils. Comm'n*, 988 F.2d at 168. Here, had the Commission established a valid interim compensation rule, all IXCs would have been required to bear a fair proportion of the interim compensation obligation and PSPs would have been fully compensated. That is precisely the result that the Commission should be endeavoring to achieve. There is no unfairness, because IXCs were on notice that they might be subject to obligations and chose to continue to use PSPs' services.

ITC^DeltaCom's reliance on *Bowen v. Georgetown University Hospital*, 488 U.S. 204 (1988), is misplaced. *Bowen* involved the imposition of cost limits for Medicare reimbursement. The agency's action defining cost limits for a past compensation period was impermissibly retroactive because the "rule in force at the time hospitals performed their services gave them a legal right to reimbursement at one rate; the Secretary's later rulemaking extinguished that right, replacing it with a right to reimbursement at a lower rate." *Bergerco Canada v. United States Treasury Dep't*, 129 F.3d 189, 192 (D.C. Cir. 1997). Here, by contrast, there was never a final, unreviewable rule in force excepting small IXCs from the Commission's compensation plan; to the contrary, at all times small IXCs were aware that their exemption from responsibility for interim compensation payments was subject to judicial review. All IXCs, including ITC^DeltaCom, were on notice that the Commission might eventually require them in this rulemaking to compensate PSPs for calls placed on their phones.

B. Equity Requires That Small IXCs Compensate PSPs For Completed Calls, Not That They Be Exempted From Payment

The Commission should reject ITC^DeltaCom's contention that it would be inequitable and otherwise contrary to the public interest for the Commission to impose per-phone compensation obligations on small IXCs for the interim period. ITC^DeltaCom's contention that it relied on the Commission's decision in the *First Payphone Order* that small IXCs would not have to pay compensation cannot support a decision not to impose compensation obligations on small IXCs. That order was subject to timely challenge and was vacated by the Court of Appeals. In vacating the order, the

Court of Appeals made it clear that it would not permit the Commission to exempt small IXCs from compensation obligations on the basis of administrative convenience. *See Illinois Pub. Telecomms. Ass'n*, 117 F.3d at 565. ITC^DeltaCom's apparent decision to destroy records and to reserve no funds to pay payphone compensation obligations was unsupported under any reading of *Illinois Public Telecommunications Association.* Certainly such a decision does not argue in favor of a windfall exemption from interim compensation obligations.

Moreover, the suggestion that the interim compensation obligation is likely to be particularly onerous is itself almost certainly incorrect, as well as irrelevant. Most small IXCs will owe relatively tiny amounts of money for each payphone, and adjustment of current payments to reflect that additional obligation is likely to be a mere blip on the companies' financial radar screens – particularly if those carriers prudently created reserves in light of the D.C. Circuit remand in *Illinois Public Telecommunications Association*. To be sure, the sum of these amounts coming from perhaps dozens of IXCs has real significance for the payphone industry. But the suggestion that interim compensation obligations are likely to create any significant financial impact on individual IXCs is implausible, and the impact on IXCs will be balanced by the impact on small, individual PSPs.

II. THE COMMISSION SHOULD CLARIFY CALCULATION OF THE TRUE-UP FOR THE INTERMEDIATE PERIOD.

A. Both Sprint and WorldCom seek "clarification" concerning the proper per-call rate to be applied in calculating carriers' and PSPs' net obligations for the intermediate period. The IXCs suggest that a rate of $.229 per-call should be used in calculating that true-up, whether initial payments were made on a per-phone or a per-call basis. Sprint Corporation's *Petition for Reconsideration and Clarification* at 16-18 (FCC filed Apr. 3, 2002) (*"Sprint Petition")*; WorldCom, Inc.'s *Petition for Clarification and Reconsideration* at 5-6 (FCC filed Apr. 3, 2002) ("*WorldCom Petition*"). The IXCs are seeking a windfall.[1] In fact, the proper rate to apply – again, whether payments were made on a per-phone or per-call basis – is $.238, and the Commission must correct any contrary indication in the *Fourth Recon. Order*.

Some background may be helpful. After the *Second Report and Order* was adopted, establishing the $.284 per-call rate, there was concern that because Flex ANI implementation was incomplete, IXCs would be unable to track and pay compensation on a per-call basis. Accordingly, in its *April 3 Waiver Order*, issued in 1998, the Common Carrier Bureau granted a waiver to IXCs to enable them to pay per-call compensation on a per-phone basis for those payphones for which no payphone-specific coding digits were available. Memorandum Opinion and Order, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 13 FCC Rcd 10893, 10893-94, ¶ 1 (1998) ("*April 3 Waiver Order*"). That per-phone payment was to be calculated based on actual call volumes received from LEC dumb phones capable of transmitting such digits. *See id.* at 10904-10911, ¶¶ 21-29.

[1] Indeed, IXCs undoubtedly will receive a windfall to the extent that the Commission orders any true-up of compensation payments during the intermediate period. As the Commission is well aware, IXCs have imposed per-call charges on *their* customers for calls made from payphones. To the extent that the applicable rate at that time was thought to be $.284, IXCs would have imposed a payphone surcharge of at least that amount. *Third Report and Order*, 14 FCC Rcd at 2637, ¶ 199. And while the Commission has observed that IXCs should make customer refunds to "serve the public interest" (*id.*), the Coalition is unaware of any IXC having made any such refund. When IXCs attempt to convince the FCC to calculate a true-up based on a rate that is even lower than the revised $.238, they are seeking to unjustly enrich themselves at the expense of PSPs and their own customers, who already were charged the higher amount.

Throughout the intermediate period, therefore, IXCs were under an obligation to make payments to PSPs either on a per-call basis or on a per-phone basis, calculated at the $.284 rate.

The $.284 rate was remanded and later adjusted to $.24, a figure that includes compensation of $.002 per call for Flex ANI charges. In principle, therefore, calculation of a true-up should be straightforward: IXCs should receive the difference between what they paid and what they should have paid, plus interest from the date of payment.

Moreover, there can be no serious dispute with the proposition that what the IXCs should have paid was $.238 per call, not $.229. The $.009 amount in the compensation rate reflects the fact that IXCs' payments to PSPs were, by virtue of the payment system, always delayed by at least four months (actually, at least 4.5 months);[2] the Commission has rightly determined that PSPs must be compensated for that built-in delay, which is an unavoidable cost of doing business. *See Third Report and Order*, 14 FCC Rcd at 2630-31, ¶ 189. That $.238 rate must apply whether payments were made on a per-call or a per-phone basis, because in either case payments were delayed by that four and a half month period.

Calculation of the true-up for payments made at the $.284 rate should be straightforward in principle. In the case of per-call (as opposed to per-phone) payments, the true-up should simply be $.046 per-call, with interest calculated from the date payment was actually made.

With respect to payments made on a per-phone basis, the true-up should still be based on the difference between what was paid and what should have been paid. In the

[2] For example, payments for calls made in the fourth quarter of a year are not due until April 1 of the following year – an average delay of 4.5 months.

Fourth Recon. Order, the Commission indicated that it will supercede the per-phone obligation calculated pursuant to the *April 3 Waiver Order* with a new per-phone obligation, calculated based on 148 calls per payphone and allocated in a manner yet to be determined. Once that allocation is set, each carrier will be entitled to receive (or be required to pay) the difference between its per-phone obligation calculated according to the Commission's new methodology and payments actually made, with interest added from the date payments were due.[3]

B. In a related vein, the Coalition expresses qualified support for the APCC's argument that the \$.009 delayed payment cost element should be included in the interim rate. As the Coalition has explained in its own *Petition for Reconsideration*, prior Commission orders make clear that carriers should compensate PSPs for delay in payment of interim compensation obligations at the 11.25% rate, not at the IRS rate. If that rate is applied *from the date the call was made*, then the Commission need not add in the \$.009 cost element. But if interest is to be calculated from the date that payments would have been due had the interim compensation regime been in effect – *i.e.*, an average of four and a half months after the date when the call was made – then the per-call rate that forms the basis for the per-phone calculation must unquestionably reflect the delay built into the compensation payment regime. *See Third Report and Order*, 14 FCC Rcd at 2630-31, ¶¶ 187-189. Indeed, if the Commission stands by its improper decision to apply the IRS rate to carriers' unpaid interim compensation obligations, it is all the

[3] The Commission could have simply required a true-up based on the per-phone amounts calculated under the *April 3 Waiver Order*, adjusted to reflect the new per-call rate. The Commission likely chose to take a different approach because more reliable data are now available concerning average per-phone obligations of various carriers. The Commission may wish to explain that decision in responding to pending petitions.

more important that the Commission recalculate the per-phone obligation based on the $.238 rate, and order that interest should be calculated from a date four and a half months after the call was made.

An illustrative example may help to clarify the point. If Carrier A carried 20 calls per payphone per month during the interim period, the Commission could calculate Carrier A's per-phone obligation for May 1997 in one of two ways. First, the Commission could apply the $.229 rate, set Carrier A's obligation at $4.58, and apply annual interest of 11.25% from May 1997. Alternatively, the Commission could apply the $.238 rate, set Carrier A's obligation at $4.76, and apply annual interest from August 1997 -- i.e., four months later (since the .009 reflects a four-month delay in payment from the time a call is made). The result should be the same. Of course, if Carrier A actually made interim compensation payments, calculation of the parties' net obligations will be more laborious, but not complicated in principle. The net obligation will simply be the difference between what Carrier A paid and what Carrier A should have paid on that same date, applying the appropriate interest rate from the date that payment was made.

III. THE COMMISSION'S METHODOLOGY FOR DEFINING THE AVERAGE NUMBER OF CALLS PER PAYPHONE WAS SOUND.

A. Sprint challenges the per-phone call average set in the *Fourth Recon. Order* on two grounds: first, that some of the PSPs that provided call data did not explain to Sprint's satisfaction how they derived their data, and second, that the Commission should have weighted the data provided by the different PSPs so that data provided by PSPs with more phones counted more in the overall average than data provided by PSPs with fewer phones. On this basis, Sprint renews its call to use actual per-call data from the period immediately after the interim period[4] and suggests that, as a second alternative, the Commission should reinstate that per-payphone call average (131) from the *First Payphone Order*. But the Commission properly considered and rejected Sprint's contention that it should have reverted to the average identified in the *First Payphone Order,* and Sprint offers no alternative evidence of call averages. Contrary to Sprint's arguments, the average defined in the *Fourth Recon. Order* is supported by substantial evidence and should not be reconsidered.

The data submitted to the Commission by PSPs had sufficient indicia of reliability to support the Commission's conclusion that the call average used to calculate interim compensation should be 148 calls per month. In particular, the data is more reliable than that used to calculate the average in the *First Payphone Order*. As the Commission noted, the numbers submitted by the PSPs and used to calculate the 148 call average in the *Fourth Recon. Order* were gathered "over a much longer observation period" than the data used in the *First Payphone Order*, and were "collected during periods of time that overlap the interim period." *See Fourth Recon. Order*, 17 FCC Rcd at 2025, ¶ 12. Although Sprint contends that the methodologies used by the different companies to derive averages are unclear, it ignores the Commission's conclusion that there "is no suggestion that any of the companies used a different methodology for its 1997 call volume study than the same company used for its 1996 call volume study." *See id.* ¶ 12,

[4] As the Coalition stated in its *Petition for Reconsideration*, if the Commission is able to devise a reliable method of allocating the per-payphone obligation for the interim compensation period, that methodology would be easier to administer than a calculation based on payments made during a later proxy period. The Commission should set interim compensation by reference to a later proxy period only if it is unable to resolve the allocation issue to its satisfaction.

n.34. This suggests that the data used in the *Fourth Recon. Order* was gathered on the same basis as the data used in the *First Payphone Order* that Sprint now supports.

The Commission was entitled to rely on the data before it as the best available information regarding call averages. Data was submitted by the RBOC Coalition (tracking per-payphone call averages for three different PSPs), the APCC, and three independent PSPs. The call volume data submitted by the Coalition is fairly representative of the average payphone. The three companies for which averages were submitted included over 400,000 payphones, "more than 20 percent of the nation's total." *See* Letter from Michael K. Kellogg to Rose Crellin, at 2 (FCC filed Mar. 27, 1998). The data submitted by the APCC included companies and payphones representing "a varied cross-section of the payphone industry, in terms of company size, geographical location, and type of payphone location." *See* Letter from Robert F. Aldrich to Magalie Roman Salas, at 1 (FCC filed Mar. 26, 1998). And although, as Sprint emphasizes, the APCC did not assert that the data met scientific standards of statistical validity, the APCC did aver that "the sample is representative of independent payphone providers and provides the most accurate available indication of average monthly dial-around call volumes at independent payphones." *Id.*

As the Commission also noted, the IXCs' argument that the initial call average of 131 calls was too high was rejected because the IXCs had "not submitted any competing data of their own [on call averages] or called into serious question the data provided." *See Fourth Recon. Order*, 17 FCC Rcd at 2025, ¶ 13, n.36. This is still the case. Although Sprint attempts to refute the figures provided by PSPs, it provided no actual evidence of call volume contradicting the average defined in the *Fourth Recon. Order*. It also cannot support the bare allegation that the companies and associations that submitted call data intentionally selected phones in high volume areas. Indeed, the APCC specifically represents that "APCC did not make any attempt to 'load' the survey to achieve any particular result." *See* Letter from Robert F. Aldrich to Magalie Roman Salas, at 2 (FCC filed Mar. 26, 1998).

Finally, the Commission's decision to average the call volume figures it received from the different PSPs also was sound. None of the numbers vary "by significant orders of magnitude," and the numbers fall "within a relatively narrow range." *Fourth Recon. Order*, 17 FCC Rcd at 2025, ¶ 13. Faced with a small range of well-supported call averages, the Commission in its discretion acted reasonably by averaging the data points without weighting them by the relative size of the PSP reporting the data. This is especially true because some of the averages already represented samples from a subset of payphones operated by the reporting PSP.

B. Nor should the Commission accept WorldCom's argument that the average call volume figure should be reduced during the intermediate period. Although WorldCom claims it has evidence of declining call volume, *see WorldCom Petition* at 3 ("WorldCom estimates it alone would be overcompensating PSPs approximately $1 million a year between 1998 and 2001, based on the observed decline in payphone volumes terminated on its network since the Interim Period."), it has not presented any evidence of such a decline. Indeed, WorldCom does not even indicate whether its "observed decline" is in overall payphone call volumes or in *per-payphone* call volumes. Obviously, it is only the latter figure that matters. Moreover, the Commission now has reliable evidence concerning per-payphone call volumes during the intermediate period.

See, e.g., Letter from Marie Breslin to Magalie Roman Salas (FCC filed Jan. 22, 2002); Letter from Marie Breslin to William Caton (FCC filed Mar. 12, 2002). That data refutes WorldCom's claim that per-payphone call volumes fell during the intermediate period. While there can be no question that call volumes recently have declined sharply, the evidence suggests that the decline began after the period in question. Accordingly, the Commission has a solid record basis for applying the 148 call average during the intermediate period.

IV. THE IXCs' REMAINING CHALLENGES ARE WITHOUT MERIT.

None of the IXCs' remaining arguments presents a substantial challenge to the Commission's order. First, Sprint's challenge to the Commission's determination that the first-underlying facilities-based carrier should be responsible for accounting for and paying interim compensation is, at best, premature, because the Commission has not yet allocated the interim period obligation. But the Commission may appropriately rely on facilities-based carriers to pay compensation if that allocation method is the most reliable way to fairly and reliably correlate carriers' compensation obligations with their use of payphones. Sprint's claim that it would be required to bear the compensation obligations of other carriers in that situation is incorrect: Sprint would be liable by virtue of the fact that it carried those payphone-originated calls and charged their reseller customers for that service. Indeed, the Commission contemplated (in the *First Payphone Order*) and has now adopted the same allocation of payment responsibility for per-call obligations.

Nor is there any unfairness in adopting that allocation of payment responsibility now. Sprint sought to overturn the original interim compensation rules, knowing that the Commission would be free to adopt a different interim compensation calculation on remand. It therefore knew that it would have to hedge against the risk that the Commission would adopt a rule imposing interim compensation obligations on facilities-based carriers determined by the number of payphone-originated calls that they carried. Moreover, there is no support for Sprint's claim that such an allocation method would be in tension with the D.C. Circuit's ruling in *Illinois Public Telecommunications Association.* To the contrary, requiring facilities-based carriers to pay would satisfy the directive of the D.C. Circuit in *Illinois Public Telecommunications Association*: so long as the Commission establishes a "nexus" between the interim compensation obligation and the number of payphone-originated calls, the allocation method should pass muster on review. 117 F.3d at 565.

Finally, the Commission should reject WorldCom's contention that the effective date of the order should be nine months after the end of the quarter in which the Commission releases the final order defining how compensation obligations are to be allocated among carriers. WorldCom contends that the task of paying compensation will be "large and administratively difficult." *See WorldCom Petition* at 4. It makes no effort to identify the tasks or explain why they will take nine months to complete. The IXCs have had ample warning that their compensation obligations will come due. There is no reason why this much-delayed process should be subject to a further nine-month delay once the Commission finally resolves the interim compensation issues.

CONCLUSION

The Commission should deny the IXCs' petitions for reconsideration.

Respectfully submitted,

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Counsel for the RBOC Payphone Coalition

Dated: May 1, 2002

CERTIFICATE OF SERVICE

I hereby certify that, on this 1st day of May 2002, I caused copies of the RBOC Payphone Coalition's Comments on Petitions for Reconsideration and Clarification of the Fourth Order on Reconsideration and Order on Remand to be served by first-class mail on the following:

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